

AMENDED IN SENATE JUNE 22, 2006

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AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

No. 281

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**Introduced by Assembly Member Liu**  
**(Coauthors: Assembly Members La Suer and Spitzer)**

February 9, 2005

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~~An act to amend Section 311.11 of the Penal Code, relating to child pornography.~~ *An act to amend Section 85306 of the Government Code, relating to the Political Reform Act of 1974.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 281, as amended, Liu. ~~Child pornography.~~ *The Political Reform Act of 1974.*

Under existing law, it is a misdemeanor for a person to knowingly possess or control any matter, as specified, that depicts a person under 18 years of age engaging in or simulating sexual conduct, punishable by incarceration or a fine, or both.

This bill would make it a misdemeanor or felony for a person to possess more than 100 of the above prohibited items. The bill would state that expert witness testimony is not required, in prosecutions for this offense, to establish that the person depicted in the item is a real or actual person.

Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

~~Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

*(1) Existing provisions of the Political Reform Act of 1974 establish specified contribution limitations with regard to candidates for elective state office and statewide elective office, but permit contributions to be transferred between campaign accounts controlled by a single candidate under specified conditions. These conditions include a condition that no transfer of funds from a contributor exceeds the applicable contribution limit of the campaign account receiving the transferred funds.*

*This bill would provide that when the committee making such a transfer is subject to a higher contribution limit than the committee receiving the transferred funds, any remaining funds not eligible for transfer under the contribution limit to the committee receiving the funds shall be returned to the contributor or contributors.*

*(2) Existing law makes a violation of the act subject to administrative, civil, and criminal penalties.*

*This bill would impose a state-mandated local program by imposing potential criminal penalties on persons who violate its provisions.*

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*(4) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes with a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.*

*This bill, which would declare that it furthers the purposes of the act, would therefore require a  $\frac{2}{3}$  vote.*

Vote: ~~majority~~  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 311.11 of the Penal Code is amended to~~  
2     ~~read:~~

1     ~~311.11. (a) Every person who knowingly possesses or~~  
2 ~~controls any matter, representation of information, data, or~~  
3 ~~image, including, but not limited to, any film, filmstrip,~~  
4 ~~photograph, negative, slide, photocopy, videotape, video laser~~  
5 ~~disc, computer hardware, computer software, computer floppy~~  
6 ~~disc, data storage media, CD-ROM, or computer-generated~~  
7 ~~equipment or any other computer-generated image that contains~~  
8 ~~or incorporates in any manner, any film or filmstrip, the~~  
9 ~~production of which involves the use of a person under the age of~~  
10 ~~18 years, knowing that the matter depicts a person under the age~~  
11 ~~of 18 years personally engaging in or simulating sexual conduct,~~  
12 ~~as defined in subdivision (d) of Section 311.4, is guilty of a~~  
13 ~~public offense and shall be punished by imprisonment in the~~  
14 ~~county jail for up to one year, or by a fine not exceeding two~~  
15 ~~thousand five hundred dollars (\$2,500), or by both the fine and~~  
16 ~~imprisonment.~~

17     ~~(b) If a person possesses more than 100 items in violation of~~  
18 ~~subdivision (a), he or she is punishable by imprisonment in a~~  
19 ~~county jail for a period not to exceed one year, or in the state~~  
20 ~~prison for 16 months, 2 or 3 years. In a prosecution for a~~  
21 ~~violation of this subdivision, neither the prosecution nor the~~  
22 ~~defense is required to introduce expert witness testimony to~~  
23 ~~establish that the person depicted in an item prohibited in~~  
24 ~~subdivision (a) is a real or actual person. The proof that a person~~  
25 ~~was not completely generated by the use of technology may be~~  
26 ~~established by direct or circumstantial evidence, or both.~~

27     ~~(c) If a person has been previously convicted of a violation of~~  
28 ~~this section, or of a violation of subdivision (b) of Section 311.2,~~  
29 ~~or subdivision (b) of Section 311.4, he or she is guilty of a felony~~  
30 ~~and shall be punished by imprisonment for two, four, or six~~  
31 ~~years.~~

32     ~~(d) It is not necessary to prove that the matter is obscene in~~  
33 ~~order to establish a violation of this section.~~

34     ~~(e) This section does not apply to drawings, figurines, statues,~~  
35 ~~or any film rated by the Motion Picture Association of America,~~  
36 ~~nor does it apply to live or recorded telephone messages when~~  
37 ~~transmitted, disseminated, or distributed as part of a commercial~~  
38 ~~transaction.~~

39     ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
40 ~~Section 6 of Article XIII B of the California Constitution because~~

~~the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

*SECTION 1. Section 85306 of the Government Code is amended to read:*

85306. (a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for elective state office of the same candidate. Contributions transferred shall be attributed to specific contributors using a “last in, first out” or “first in, first out” accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in Section 85301 or 85302. *Notwithstanding any other provision of law, if a transfer is made pursuant to this subdivision, and the committee making the transfer is subject to a higher contribution limit than the committee receiving the transferred funds, any remaining funds that are not eligible under section 85301 or 85302 for transfer to the committee receiving the funds shall be returned to the contributor or contributors.*

(b) Notwithstanding subdivision (a), a candidate for elective state office, other than a candidate for statewide elective office, who possesses campaign funds on January 1, 2001, may use those funds to seek elective office without attributing the funds to specific contributors.

(c) Notwithstanding subdivision (a), a candidate for statewide elective office who possesses campaign funds on November 6, 2002, may use those funds to seek elective office without attributing the funds to specific contributors.

*SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a*

1 *crime within the meaning of Section 6 of Article XIII B of the*  
2 *California Constitution.*  
3 *SEC. 3. The Legislature finds and declares that the provisions*  
4 *of this act further the purposes of the Political Reform Act of*  
5 *1974 within the meaning of subdivision (a) of Section 81012 of*  
6 *the Government Code.*

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